

Circuit-Wise, Inc. and United Electrical, Radio and Machine Workers of America (UE). Cases 34-CA-5086, 34-CA-5119, 34-CA-5126, 34-CA-5177, 34-CA-5214, 34-CA-5352, 34-CA-5363, and 34-CA-5371

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

This case involves the issue of whether the Respondent's conduct following the Union's unconditional offer to return to work after a 17-month strike violated Section 8(a)(1), (3), and (5) of the Act.¹

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and con-

¹On February 20, 1992, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief to the cross-exceptions taken by the General Counsel and the Charging Party. The General Counsel and the Charging Party both filed cross-exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We grant the Charging Party's unopposed motion to take official notice of the decision by Administrative Law Judge Jesse Kleiman in a related proceeding against the Respondent in Case 34-CA-4768 et al.

²The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent condoned the strike misconduct of the seven employees denied reinstatement, we note that its Personnel Manager Thomas McMahon, with sole authority in personnel matters, was admittedly fully aware of the seriousness of the employees' misconduct when he testified at the unemployment compensation hearing in December 1990 but did not raise the misconduct as a defense to the employees' claim for unemployment benefits. Further, no additional acts of misconduct are alleged to have been committed by the seven employees between the date of the unemployment hearing and the date they were denied reinstatement. Under these circumstances, McMahon's statement in response to a direct question at the unemployment hearing that he would reinstate Frank Blazi and the other strikers clearly and convincingly established the Respondent's decision to overlook the strike misconduct, wipe the slate clean, and permit the continuation of the employment relationship. *White Oak Coal Co.*, 295 NLRB 567 (1989).

Although not discussed in his decision, the judge found that the Respondent's suspension of Hopeton Genus on August 16, 1991, violated Sec. 8(a)(3) and (1) of the Act. It is undisputed that Genus was suspended by the Respondent from August 16 to 19, 1991, and that the Respondent's reasons for the suspension were the same as for Genus' subsequent discharge. We agree, for the reasons stated by the judge, that Genus' discharge was discriminatorily motivated and therefore we further find that the suspension was similarly discriminatorily motivated.

clusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Circuit-Wise, Inc., North Haven, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.³

Substitute the following for paragraph 1(h) of the recommended Order.

“(h) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

³The General Counsel excepts to the judge's failure to include the Board's broad injunctive cease and desist language in the recommended Order. We find merit in this exception. In view of the Respondent's repeated violations of the Act in this case and a prior case (306 NLRB 766 (1992), and the egregious nature of those violations, we find that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

The judge inadvertently omitted attaching a notice to his decision.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT make unilateral changes in our health insurance plan for bargaining unit employees.

WE WILL NOT refuse to supply the addresses of bargaining unit employees pursuant to a proper request from the Union.

WE WILL NOT make a unilateral change in our employee work rule regarding leaving our property during lunchbreaks.

WE WILL NOT refuse to supply the names of strikers to whom we sent offers of reinstatement but who did not receive such offers.

WE WILL NOT discharge or fail and refuse to offer reinstatement to striking employees for strike mis-

conduct after having condoned their activity and offered to reinstate them.

WE WILL NOT suspend or discharge employees because they request union representation before participating in an interview in which they reasonably believe that discipline may issue against them or because they engaged in union activities protected by the Act.

WE WILL NOT threaten to discharge employees for violating the work rule, which we unilaterally changed, regarding leaving our property during lunchbreaks.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the status quo that existed just prior to our unlawful unilateral change in the health insurance plan on April 1, 1991, including observing the terms of our interim agreement with the Union covering health insurance, reimbursing, with interest, our employees for unlawfully increased employee contributions from April 1, 1991, and making whole our employees for any loss they may have suffered by virtue of our unlawful unilateral change, with interest.

WE WILL offer Frank Blazi, Gerald Burkett, Virgilio Bobis, Paul McCarthy, Janet McCutchen, Diane Nurse, and Guillermo Vazquez immediate and full reinstatement to their former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to the employees' seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any person hired as a replacement, and WE WILL make these employees whole, with interest, for any loss of earnings and other benefits suffered by them by reason of our unlawful failure to offer them reinstatement on and after January 31, 1991.

WE WILL offer Hopeton Genus immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, discharging, if necessary, any employee hired to replace him, and WE WILL make him whole for any loss of earnings and other benefits resulting from his unlawful suspension and discharge beginning on August 16, 1991, less any net interim earnings, plus interest.

WE WILL notify Hopeton Genus that we have removed from our files any reference to his suspension and discharge and that the suspension and discharge will not be used against him in any way.

WE WILL provide to the Union the addresses of all bargaining unit employees and the names of the strikers to whom offers of reinstatement were sent but who did not receive them.

WE WILL rescind the unilateral change in the employee work rule regarding leaving our property during lunchbreaks.

CIRCUIT-WISE, INC.

Thomas W. Doerr, Esq., for the General Counsel.

Howard I. Wilgoren, Esq., of Framingham, Massachusetts, for the Respondent.

Jamie L. Mills, Esq., of West Hartford, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This proceeding is based on eight unfair labor practice charges filed by United Electrical, Radio and Machine Workers of America (UE) (the Union) between February 7 and September 19, 1991.¹ Based on these charges, the Regional Director for Region 34 issued a series of complaints against Circuit-Wise, Inc. (Circuit-Wise or Respondent). The original complaint was a consolidated complaint dated March 16, in Cases 34-CA-5086, 34-CA-5119, 34-CA-5126, and 34-CA-5177. Subsequently, on July 1, an amended consolidated complaint issued in the above cases and in Case 34-CA-5214, which included all of the allegations previously set forth in the earlier complaint. Finally, on September 20, a consolidated complaint issued in Cases 34-CA-5352, 34-CA-5363, and 34-CA-5371. Thus, for the purpose of this consolidated proceeding, all the allegations at issue are set forth in the complaints dated July 1 and September 20. The consolidated complaints allege that Respondent has engaged in conduct which violates Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

Respondent filed three separate answers, each of which admits, *inter alia*, the filing and service of the charges, the Board's jurisdiction over Respondent, the labor organization status of the Union, appropriateness of the bargaining unit, the Section 9(a) status of the Union, and supervisor/agency status of certain named individuals.

Hearings were held in this matter in Hartford, Connecticut, on October 7, 8, 9, 10, 21, 23, 24, and 30. Briefs were received from the parties on January 27, 1992. Based on the entire record, and on my observation of the demeanor of the witnesses and in consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Circuit-Wise, Inc., a Connecticut corporation with its principal office and place of business located in North Haven, Connecticut, is engaged in the manufacture and nonretail sale and distribution of printed circuit boards, primarily for use in the automotive industry. It is admitted and I find that Respondent is now, and has been at all times

¹ All dates are in 1991 unless otherwise noted.

material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts and a Summary of the Issues

In May 1988, the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees in the following unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its North Haven, Connecticut facility including employees involved in the production of products for Mint-Pac Technologies, Inc., and chemical technicians; but excluding all other employees, leadpersons, office clerical employees and guards, professional employees and other supervisors as defined in the Act.

The parties began negotiations for a collective-bargaining agreement, but were unable to reach agreement. On September 11, 1989, a majority of unit employees commenced a strike at the facility. The Union made an unconditional offer to return to work on January 30, and shortly thereafter the strike ended. Certain conduct by the parties resulted in a hearing before Administrative Law Judge Raymond P. Green in Case 34-CA-3885 et al. On January 17, Judge Green issued his decision in that case and found, inter alia, that the strike was an unfair labor practice strike from its inception. Respondent did not except to this finding and is thus bound by it. Judge Green also found that Respondent committed a number of specified unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act. To the extent that these findings are relevant to issues in the instant proceeding, they will be noted in connection with my discussion of those issues.

On January 30, the Union ended its strike and made an unconditional offer to return to work. On January 31, Respondent made offers of reinstatement to all but seven of the strikers. About 80 strikers accepted the offer and returned to work on or shortly after February 11. The seven strikers not offered reinstatement are considered by Respondent as discharged for serious strike misconduct. In February, shortly after the strikers returned to work, Respondent suffered a sharp decline in the demand for its product. It responded by furloughing for short periods a number of its employees, including some reinstated strikers. In March, it laid off about 38 employees for an approximate 3- to 4-month period. Three of the laid-off employees were reinstated strikers. During February and March, the Union made certain information requests of the Respondent, who supplied some of the information sought, but refused and still refuses to supply the addresses of bargaining unit employees and certain information pertaining to its offers of reinstatement. Also, in April, Respondent unilaterally made changes in its health insurance plans, which had the effect, inter alia, of increasing the employees' share of premium payments. Finally, between June and August 1991, Respondent allegedly made unilateral

changes in one of its work rules and threatened discharge for violation of the rule; and, warned, allegedly threatened, suspended, and discharged employee Hopeton Genus.

The consolidated complaints in this proceeding allege that Respondent has violated the Act by:

1. Making unilateral changes in its health insurance plan.
2. Refusing to provide the Union with certain employee addresses.
3. Refusing to supply the names of strikers who did not respond to Respondent's offer of reinstatement.
4. Refusing to reinstate seven strikers.
5. Denying full reinstatement to unfair labor practice strikers by subsequently laying off and furloughing them.
6. Unilaterally changing its rule regarding employees leaving Respondent's property.
7. Threatening to discharge employees for violating the above-noted rule.
8. Warning, suspending, and discharging employee Hopeton Genus for discriminatory reasons.

Each of these allegations will be discussed below under appropriate subheadings.

B. Did Respondent Unlawfully Make Unilateral Changes in Its Health Insurance Program

Respondent maintains a health care program for its unit employees, the primary facet of which is coverage by Blue Cross and Blue Shield. Employees may also elect to receive coverage from a health maintenance organization. Both the Respondent and the employees contribute toward the cost of these plans. The contributions made by the Company for Blue Cross coverage sets the level of company contributions for the HMO plan. The Blue Cross plan has an anniversary date of March 1 of each year. A detailed description of the plans is set out in Judge Green's decision at pages 28-31 thereof. In his decision, Judge Green found that Respondent violated the Act when it unilaterally increased the level of employee contributions to the health plans in March 1989. The Respondent has excepted to this finding. It contends that Blue Cross demanded in effect an increase in the required premium for the year 1989-1990, and that if the increase was absorbed by the Respondent, it would amount to a change in the status quo while negotiations were in progress. The judge disagreed and found that by passing on the increase to the employees, the Respondent violated the Act by unilaterally cutting the employees' pay.

Prior to the issuance of Judge Green's decision, the parties entered into an interim Agreement on health care coverage dated May 17, 1989. This Agreement provided for a split in the employee and employer contributions pending the conclusion of negotiations for a contract. It also provides: "This Agreement in no way shall be considered a waiver by the Union of its claim for reimbursement of employee contributions from March 1, 1989 to May 15, 1989, contained in the NLRB case."

Pursuant to his finding of an unlawful change in the contributions for health care, Judge Green in his remedy, stated:

Additionally, as the subsequent interim agreement between the Union and the Company to share the added costs was made as a consequence of the Respondent's illegal unilateral action, it is my opinion that the interim agreement is terminable at the option of the Union. If

such option is exercised by the Union, then the Respondent shall be liable for the increased employee contributions for medical insurance from March 1, 1989 until such time as a new interim agreement is reached on this subject, or until a final collective bargaining agreement is reached and executed, or until such time as the parties have bargained in good faith and reached an impasse regarding medical insurance.²

Following receipt of Judge Green's decision, the Union, by International Representative Carol Lambiase, sent a letter to Respondent dated February 4. With respect to the matter of health insurance, the letter stated:

Further, pursuant to the Judge's decision, the Union revokes the interim agreement between the parties concerning employee contributions for medical insurance subject to the Company returning to the pre-March, 1, 1989 employee contribution schedule. If, however, the Company intends to maintain the unilaterally imposed higher employee contribution rates or unilaterally implements higher rates, the Union will not exercise its option to revoke the parties interim agreement at this time. The Union intends to pursue its claim in compliance for recovery of all amounts deducted from employee wages that exceed the pre-March 1, 1989 contribution schedule.

Respondent replied to Lambiase's letter with one of its own dated February 6. The Respondent stated, *inter alia*:

Apart from the issues raised at the hearing, it is the Company's position that the interim agreement negotiated between the parties remains in full force, and the Judge exceeded his authority by ruling that the interim agreement was voidable.

Respondent again wrote to the Union on February 17, stating, *inter alia*:

Your letter dated February 4, 1991, is most ambiguous with respect to your position on the interim agreement pertaining to health insurance. Please advise as to whether you are, or are not attempting to void the interim agreement.

The Union responded in a letter dated February 27, which states in pertinent part:

My letter of February 4, 1991 clearly states the Union's position on the issue of employee contributions for health insurance. It seems to me that you have 2 choices: either comply with the ALJ's decision and recommended order and return to the pre-March 1, 1989 employee contribution schedule or continue to deduct the higher amounts and risk having to reimburse every bargaining unit employee the difference between the two rates from March 1, 1989 forward. If the Company chooses to return to the pre-March 1, 1989 employee contribution rates, the Union will revoke the 'interim agreement' between the parties.

By letter dated March 1, the Respondent proposed changes in the health insurance plans, including the level of contributions, to be effective beginning March 4. On March 5, the Respondent sent the Union a letter which states, *inter alia*:

Please disregard my letter of March 1, 1991 in so far as it pertains to health insurance. With regard to health insurance, it is our proposal that the interim agreement was negotiated in good faith and the company reserves its right to appeal Judge Green's decision. Notwithstanding the foregoing and given the Union's unilateral abrogation of the interim agreement, the company is prepared to meet and discuss modifications pertaining to health insurance. I proposed meeting at 5:00 p.m. on Tuesday, March 12, 1991 at the Holiday Inn. The company proposed changing the existing health insurance April 1, 1991. [Specific changes are proposed.]

The Union replied to this letter with one dated March 6, which states:

We welcome your agreement to begin negotiations. As you are aware, the Union has not abrogated the interim agreement. The Union is willing to negotiate on health insurance as well as all the other outstanding issues—wages, pension, grievance procedure, etc.

On March 11, the Respondent notified the Union that "time is of the essence" and requested that the Union meet the following day. The Union, by Lambiase, responded with a faxed letter dated March 11, in which she advises that she cannot begin bargaining on March 12, because the Union was in the process of electing a new bargaining committee. She also advised that she would contact the Company as soon as the committee was elected.

By letter to the Union dated March 12, the Respondent advised:

In response to your letter dated March 11, 1991, the company is not suggesting resumption of negotiations regarding a contract at this time. It is the company's position that negotiations with respect to a collective bargaining agreement remain at impasse. . . . As I advised you during our telephone conversation on March 1, 1991, and in my letters dated March 4 and March 11th, time is of the essence in terms of implementing the changes in health insurance. Given the unavailability of the union to meet with the company on this issue, and in view of the legal requirement for a two week open enrollment period prior to April 1, 1991, the company must proceed with implementation of its proposal as contained in my March 4, 1991 letter. (Please note that the March 4, 1991 letter contained a typographical error; the deductible proposed by the Company is \$300/\$600 NOT \$400/\$800.)³

On March 13, the Union responded with a letter which states in pertinent part:

Your statement that the Union is unavailable to meet to negotiate is absurd as my letters to you dated March

² Respondent excepts to this recommendation.

³ There is no March 4 letter in the record. I believe that Respondent intended to refer to its letter of March 5.

11, 1991 and March 6, 1991 demonstrate. As I informed you on March 6, 1991, the Union is in the process of electing a negotiating committee. Those elections are scheduled for Thursday, March 14, 1991 in the Company cafeteria immediately prior to and following each shift. After the elections I will contact you to make the necessary scheduling arrangements for negotiations. The Union repeats its objections to the unlawful implementation of any unilateral changes to bargaining unit employees health insurance. The Union also objects to the unilateral implementation of a layoff without bargaining with the Union. Therefore, the Union requests that the Company bargain with the Union over bargaining unit employees health insurance, layoffs, and all other mandatory subjects of bargaining, and further requests that the Company not proceed with its threat to unilaterally implement changes to the existing wages, hours, and other terms and conditions of employment before bargaining in good faith with the Union.

By letter to the Union dated March 14, the Respondent stated:

I advised you by letter of March 1, 1991 of the proposed changes to health insurance. I advised you on March 4, 1991 that we had persuaded our health care carriers to delay increases until April 1, 1991. The company was prepared to meet and discuss this issue prior to implementation. Unfortunately, as of today the Union has been unable to meet. Given the Union's unavailability and the time necessary for open enrollment, the company is proceeding with these proposed changes. Notwithstanding the foregoing, the Company is prepared to meet and discuss this issue prior to its implementation. I am enclosing a memorandum distributed to our employees.

On March 18, the Union replied to Respondent's March 14 letter, stating:

(After notifying the Respondent of the election of a new bargaining committee and suggesting dates for bargaining in the week of March 26th), the Union repeats its objections to the Company's unlawful implementation of unilateral changes to bargaining unit employees' terms and conditions of employment. In addition, the Union requests that the Company immediately cease by-passing the Union and presenting proposals directly to bargaining unit employees.

The Respondent sent letters dated March 15 and 19 in which it suggested alternate dates for negotiations. The Union replied in a letter dated March 20, suggesting different dates and again objecting to implementation of the proposed changes in the health insurance program. The parties exchanged further correspondence to establish a date to meet, and in one of these letters, dated March 22, the Respondent advised the Union:

In order that there be no misunderstanding, I want to state the Company's position quite clearly. The Company has agreed to meet on March 26th for the purpose of discussing a proposed new interim agreement per-

taining to health insurance coverage for unit employees. This meeting is necessary in view of the Union's unilateral abrogation of the interim agreement previously negotiated. We will also provide information concerning the recent layoff.

In a letter dated March 25, the Respondent advised the Union:

I want to emphasize that no changes to employee health insurance have been made at the present time. The open enrollment was conducted because of the union's unavailability to meet in a timely manner after being informed of the Company's proposal for a new interim agreement on health insurance on March 1, and 5, 1991. The proposal was necessary due to the Union's unilateral abrogation of the prior interim agreement pertaining to health insurance which was executed by the parties on May 17, 1989. That agreement by its terms was to remain in effect until the "conclusion of negotiations for a collective bargaining agreement." Moreover, the Union in the interim agreement agreed that it would seek from the NLRB "reimbursement of employee contributions from March 1, 1989 to May 15, 1989."

On March 26, a meeting took place between the parties on the issue of health insurance. Representing Respondent were Personnel Manager Thomas McMahon and Attorney Wilgoren. Representing the Union were Lambiasi, President John Hovis, and several members of the employee negotiating committee. The descriptions given by witnesses about what happened at this meeting are essentially the same on important points. According to McMahon, the Company took the position that the interim agreement was still valid, but that the Union had abrogated it. Hovis denied that the Union had abrogated the agreement and stated that as far as the Union was concerned, the interim agreement was still in effect. Wilgoren stated that the parties were at impasse and Hovis contended that they were not. As the meeting ended, Hovis was asked if the Union were seeking recovery of insurance premiums paid by employees beyond May 1989. He answered that the Union was not seeking such premiums at that time, but would keep its options open. Hovis also said that health insurance could not be separated from the other outstanding issues. He asked for information concerning Respondent's costs for health insurance and Wilgoren promised to provide them. The meeting ended without agreement on any issue.

On April 11, Respondent sent the Union a letter in which it provided certain information requested by the Union, and also stated:

As you know, the parties met on March 26, 1991 for purposes of negotiating a new interim agreement pertaining to health insurance. This meeting was necessary as a result of the Union's unilateral abrogation of the prior interim agreement which has been negotiated between the parties in May of 1989. As no agreement was reached between the parties on negotiating a new interim agreement, it is obvious that the parties are at an impasse on this issue. Accordingly, the Company has implemented its proposal effective April 1, 1991.

The implemented proposal resulted in increased contributions to be made by unit employees and changed coverage limits. The interim agreement by its terms was not to be changed until the parties reached agreement on a full collective-bargaining agreement and contains no time limit, or other language which would allow one party to change the agreement without the consent of the other. Board law also prohibits an employer from changing a term or condition of employment memorialized in an existing agreement absent the consent of the Union. *Nestle Co.*, 251 NLRB 1023 fn. 3 (1980).

Respondent contends that it did not need such consent because the Union abrogated the interim agreement. I do not agree. Only two communications from the Union could be relied on by Respondent in support of its position on this issue. They are the February 4 and 17 letters from Lambiase to Respondent. On March 6, Lambiase sent a letter which clearly denied that the Union had abrogated the agreement.

Although I find the February 4 letter to require more than cursory reading to grasp its full meaning, it certainly does not abrogate the interim agreement. The first phrase of this letter purports to do that. However, the remainder of the sentence and the following sentence place conditions on the revocation. As I read the letter, the Union will revoke the interim agreement only if the Respondent agrees to return to the employer-employee contribution levels in existence as of March 1, 1989. If the Employer intends to require employee contributions at the level called for by the interim agreement or at higher levels, then the Union is not revoking the agreement.

The Respondent did not take this letter as a clear revocation as it thereafter wrote the Union stating that the interim agreement was still valid and that Judge Green had erred in ruling that it was voidable at the choice of the Union. Respondent subsequently wrote the Union a letter wherein it characterized the February 4 letter as ambiguous and asked whether the Union was attempting to void the interim agreement.

The Union's response was to warn the Respondent that it should comply with Judge Green's recommended Order, but clearly states that it is not voiding the interim agreement absent Respondent agreeing to return to the pre-March 1, 1989 contribution levels. At most this seems to me nothing more than advice that the Respondent was running a risk by not voluntarily complying with the judge's recommended Order and an invitation to so comply. When the Respondent made it clear that it was not accepting that invitation and advised the Union on March 1 that it was proposing changes in the health insurance plans and contribution levels, the Union was quick to respond that it had not revoked the interim agreement.

In my opinion, the only evidence in the record supporting its proposition that the Union voided the agreement is that which deals with the Union's reservation that it might seek compliance with Judge Green's recommended Order. Even this evidence is not helpful because at the March 26 meeting, Hovis indicated that it was not seeking damages not contemplated by the interim agreement itself at that time. This meeting was the first time the Respondent inquired of the Union whether it intended to seek damages not contemplated by the interim agreement. Although it argues that the Union's February 4 and 17 letters indicate the Union was

seeking damages beyond those envisioned in the interim agreement, I believe that they just put forth that possibility as an option, not as a course of action. By unequivocally denying that it was revoking the interim agreement, the Union more clearly indicated that it would abide by the agreement. Respondent must argue that it had a right to require the Union to absolutely disavow Judge Green's recommended Order or the interim agreement was voided. As the Respondent's own misdeeds gave rise to the situation where the Union may have a choice in the matter, it is in no position to make this argument.

As the Union did not abrogate or void the interim agreement and as it did not consent to change the interim agreement, I find that Respondent's unilateral declaration of impasse and implementation of its new health insurance proposals to be in violation of Section 8(a)(5) of the Act. Because of this finding, I do not believe it necessary to seriously discuss the issue of impasse. I do not believe that the parties could have been at impasse on the health insurance issue because of the Respondent's prior unremedied unfair labor practice on the same issue. *Dahl Fish Co.*, 279 NLRB 1084 fn. 3 (1986). Moreover, at the March 26 meeting, the Respondent agreed that it had not complied with a valid information request concerning the health insurance issue and agreed to supply it at a later date. Without any further negotiations taking place in the interim, Respondent supplied this information in the same letter that it announced implementation of its new proposals. Obviously the information supplied may have resulted in some movement by the Union, if the Respondent had given it time to respond. Because it did not give the Union any time to respond, its declaration of impasse was premature. Further, though Judge Green found that the parties were at impasse in negotiations for a collective-bargaining agreement, the parties had been able to reach an interim agreement on health insurance. There is no reason to assume that another such interim agreement could not be negotiated, and Judge Green's decision even suggests that.

C. Did Respondent Unlawfully Refuse to Provide the Addresses of Its Employees in the Bargaining Unit?

By letter dated March 8, the Union requested information concerning employees in the bargaining unit, including their addresses. The Union's request was repeated in letters dated March 11, 20, and 21. Respondent answered the requests in a March 22 letter, which states in pertinent part:

Enclosed please find a list of employees in the bargaining unit together with their names, job titles, department, shift, date of hire and pay rates. We are not providing addresses of our employees in view of the violence and vandalism that occurred during the strike at the picket line and at employees' homes. There exists a clear and present danger that employees will be subject to further violence and vandalism should their addresses be disclosed.

Respondent contends that this response was prompted at least in part because of employee response to an owners' report to employees dated March 21, which stated:

Our attorney has told us that we are required by law to give your names and addresses to the union. We do

not like doing this. During the strike we did not give the union your names and addresses because of the violence and vandalism that occurred at the picket line and at employees' homes. . . . However, now that the strike is over, we must give the union your names and addresses. We don't like it; we think it is a violation of your privacy; but the law requires disclosure to the union and we must comply with the law.

The report suggest that if employees do not want information about them supplied to the Union, they should contact the Board and complain.

Following the issuance of this owners' report, on March 21 and 22, some 50 employees gave Respondent written requests that their names and addresses not be given to the Union.⁴ Of these 50 requests, only 10 make any mention of fear of some form of harassment. The remainder are simply requests based on the employees' perceived right to privacy.

An earlier request for similar information during the course of the strike was rejected by Judge Green based on the Respondent's reasonable and objective fear of union harassment of nonstriking employees and replacements. In this regard, following the issuance of a complaint against the Union alleging certain picket line misconduct, the Union and the General Counsel entered into a settlement stipulation. This stipulation provides for the entry of a consent order by the Board and a consent judgment by any United States Court of Appeals. Pursuant to this stipulation, the Board on May 2, 1991, issued its Decision and Order giving effect to the stipulation which ordered the Union to cease and desist from picket line misconduct and post notice. As of the date of hearing in this proceeding, the Board had not yet obtained the judgment of a United States Court of Appeals and thus, the Union had not yet complied with the notice posting requirement of the Board's Order. There is no evidence that the Union has failed to comply with the cease-and-desist order and there is no evidence of any employee harassment subsequent to the end of the strike.

In any event, in response to the Respondent's refusal to supply the addresses of unit employees, the Union wrote a letter dated April 15, in which it advised Respondent:

Employee addresses are relevant and necessary to the Union's performance of its statutory duties as exclusive bargaining representative. Since the return to work in February, there has not been a single allegation of harassment or other unlawful conduct by strikers or the Union toward nonstrikers. There is no evidence to support your statement that there is a clear and present danger to bargaining unit employees. I assure you that the information will not be used for any improper purpose and that the Union will exercise its standard safeguards to protect against improper disclosure of the information.

Receiving no reply to this letter, the Union again wrote to Respondent on May 1, repeating its request for the employee addresses and inviting Respondent to advise if it sought any particular assurances or a specific procedure it wanted followed in order to provide the addresses. Respondent replied

in a letter dated May 7 in which it reiterated its refusal to supply the information because of the clear and present danger that employees will be subject to further violence and vandalism should their addresses be disclosed. The letter also notes that the Union had filed an unfair labor practice charge over the refusal and the involved Regional Office had determined that the Company was fully justified in its refusal. Actually, the Union withdrew the charge and the Regional Director approved the withdrawal without comment in a letter dated May 20. On May 9, the Union filed a substantially similar charge, which resulted in the issuance of the complaint which is a part of this case.

The names and addresses of bargaining unit employees is presumptively relevant information, and the union is not required to show the necessity of such information. *Dynatron/Bondo Corp.*, 305 NLRB 574 (1991); *Safelite Glass*, 283 NLRB 929 (1987). Respondent submits that it was privileged from disclosing the employees' addresses because there existed a continuing fear in the minds of the employees that they would be subject to a repeat performance of the violence and vandalism allegedly perpetrated by the Union during the strike. *Sign & Pictorial Local 1175 v. NLRB*, 419 F.2d 726, 737 (D.C. Cir. 1969); *Webster Outdoor Advertising Co.*, 170 NLRB 1395, 1396 (1968); *Shell Oil Co. v. NLRB*, 457 F.2d 615 (9th Cir. 1972).

Although there may have been some justification for claiming a clear and present danger to employees as a reason for refusing to supply their addresses on March 22, this obviously faded swiftly as time passed and there was no continuing misconduct attributed to the Union. Yet, even as late as November during the conduct of this hearing, Respondent still asserts there exists a clear and present danger. This continued assertion, without any factual support, seriously draws into question the honesty of its original refusal. Further, even though it invited employee responses expressing fear of union harassment in its March 21 owner's report, only 10 employees out of a work force of about 330 bargaining unit employees requested that their names and addresses not be supplied for that reason.

Another reason for doubting Respondent's stated reason for not supplying the addresses and rejecting it is Respondent's failure to heed the holdings of the Board and the courts in the cases it relies on. These cases allow an employer to refuse to supply requested information in the face of a clear and present danger, unless the union gives adequate assurance that the information will not be misused, or the employer proposes alternate means to satisfy the union's legitimate needs for such information. The Union here, Union offered a general assurance in its April 15 letter and asked the Respondent if it wanted any specific assurances in its May 1 letter. That letter also invited Respondent to suggest alternate procedures that would satisfy the Union's need for the employees' addresses. Respondent refused to accept the assurances offered, refused to specify any other assurance it wanted, and refused to suggest any alternate procedures. In the absence of any factual evidence that a clear and present danger existed in March and given Respondent's failure to accept or propose suitable assurances that the information requested would not be misused, or in the alternative, propose some procedure such as supplying the information to a third party to achieve the Union's purposes, I find that Respondent was not justified in refusing the Union's request for bargain-

⁴ At this time, Respondent had in excess of 330 bargaining unit employees.

ing unit employees' addresses and thus violated Section 8(a)(5) of the Act. The fact that the Union could circulate a news bulletin in the Respondent's facility does not seem to me to be comparable with being able to directly communicate by letter or in person with unit members.

Respondent has offered a defense for its actions based on the fact that the Union had not complied with the Board's Order against the Union dated May 2, issued as a result of the settlement stipulation signed March 5 and approved by the Regional Director on March 16. I can find no precedent for finding that the Respondent has no obligation to comply with a legitimate information request until the Union fully complies with the Board's Order. Moreover, there was no finding by the Board that the Union did commit the unfair labor practices alleged in the complaint which underlies the settlement stipulation. By entering into the settlement stipulation, the Union agreed to abide by its terms when it became effective. The fact that it would take some time to become effective does not mean that the Union is not complying with the Board's involved Order and, to the contrary, the total absence of any continued occurrence of the type conduct proscribed by the Board's Order indicates compliance with the Order is being made. I do not accept this defense.

D. Did Respondent Violate the Act by Refusing to Supply the Names of Strikers Who Did Not Respond to the Offer of Reinstatement?

It is alleged that the Employer violated Section 8(a)(5) of the Act by failing and refusing to supply the Union with the "names of all strikers to whom the Respondent had made offers of reinstatement but who have not responded." On February 13 and 14, Lambiase orally asked Respondent for a list of all strikers to whom it had made an offer of reinstatement, but who had not responded. She had previously requested a list of the names of strikers to whom Respondent had sent letters offering reinstatement, and Respondent had provided her with such a list. Another request by Lambiase for the names of strikers who did not respond to Respondent's letters offering reinstatement was contained in a letter dated February 13. Respondent responded in a letter dated February 17, which was accompanied by a list containing the names of the strikers who had returned to work. Thus, by comparing the two lists, the Union could determine which strikers had not returned to work. However, it could not ascertain from the information supplied by Respondent which strikers had not received the letters sent by Respondent. These letters were sent by certified mail, return receipt requested, so that information could be ascertained.⁵

In a letter to Respondent dated February 27, Lambiase repeated her information request, and added:

There are likely to be strikers who have not received the Company's offer of reinstatement and the Union will attempt to contact them ourselves in person if necessary. However, the Union does not know who the Company was unable to contact.

This letter in effect changed the information request from one seeking the names of strikers who did not respond to the reinstatement offer to one for the names of those who did

not receive the offer. This is a more restrictive request and one I believe easily complied with. In this regard, Lambiase testified that the Union did not have the resources to go after every single one of the some 60 employees who did not return to work. I believe that attempting to insure that strikers were aware of Respondent's offer of reinstatement is clearly within the scope of the Union's responsibility as the exclusive representative of Respondent's unit employees. Limiting the attempt to one seeking to reach only those strikers who did not receive Respondent's offer is certainly reasonable as the Union could assume that those strikers who did receive the offer, but chose not to return, made an informed choice. I do not believe it would be difficult, onerous, or expensive for Respondent to supply a list of the names of the strikers, if any, who did not receive its offer. At the very least, it could afford the Union the opportunity to look at the certified mail receipts for the 60 strikers who did not return to work and make the determination for itself whether any had not received the offer. I find that such information was necessary for the proper performance of the Union's duties as the employees' representative. If Respondent did not understand what the Union was seeking after the February 27 clarification, it had the duty to seek further clarification. As Respondent had the information requested, did not supply it, and did not ask for clarification which would show that it did not know what was being requested, I find that violated Section 8(a)(5) of the Act. *Interstate Food Processing Corp.*, 283 NLRB 303 (1987).

E. Did Respondent Violate the Act by Not Reinstating Seven Strikers Because of Alleged Strike Misconduct?

On receipt of the Union's unconditional offer to return to work, the Respondent sent the Union a letter indicating that seven strikers would not be reinstated due to their participation in misconduct during the strike. In this regard, strikers Frank Blazi, Gerald Burkett, Virgilio Bobis, Paul McCarthy, Janet McCutchen, Diane Nurse, and Guillermo Vazquez were each sent letters by Respondent indicating that their employment with Respondent was terminated due to their participation in serious strike misconduct.

General Counsel's Exhibit 17 includes the documentation relied on by Respondent in making the determination to discharge the seven strikers. The decision was made by Personnel Manager Thomas McMahon. There is no evidence in the record which contradicts the evidence contained in General Counsel's Exhibit 17 and there is nothing in the record which would lead me to believe that McMahon did not honestly believe that the involved individuals did what the documentation indicates. Respondent's attorney sent to the Regional Office a short memorandum based on the documentation which briefly describes the conduct relied on for the discharge of each involved striker. McMahon also offered testimony about this conduct. A compilation of both is as follows.

1. Jerry Berkett (Gerald Burkett)

On July 3, 1990, Berkett came on to the property, picked up a police barricade, swung it in the air repeatedly, and threatened a security guard with physical harm. This conduct

⁵ See Tr. 552-553.

was alleged by the Labor Board to be unlawful in a complaint against the Union.⁶

2. Frank Blazi

a. Threat on September 14, 1989. (“We know where you live; we’ll get you tonight.”) (Tr. 385–386.)

b. On September 29, 1989, Blazi was in a van which followed Fabio Dioses as he left the plant. At one point the van which was driven by Al Hart and contained other strikers, cornered Fabio in a parking lot. Blazi got out of the van and stated, “You are a scab motherf—ker, we know where you live, you are dead tonight cocksucker.” Prima facie evidence of violation of the National Labor Relations Act was found by the Board based on this conduct and formed part of the settlement agreement and notice to members which was posted by the Union.

3. Virgilio Bobis

On October 12, 1990, Bobis assaulted a nonstriker crossing the picket line. He was arrested by the North Haven police for breach of peace. (McMahon testified that Bobis hit an employee crossing the picket line, almost knocking her down. Tr. 387–388.) This conduct was alleged as unlawful by the Labor Board in a complaint against the Union.

4. Paul McCarthy

a. On September 14, 1989, McCarthy ran a marker down the side of a vehicle crossing the picket line and was arrested for criminal mischief.

b. On September 15, 1989, McCarthy kicked or punched a car.

c. On September 18, 1989, McCarthy punched the car of an employee. (McMahon testified that McCarthy pounded on the side of a car as it crossed the picket line.) (Tr. 389.)

5. Janet McCutchen

On November 21, 1989, McCutchen repeatedly struck a vehicle crossing the picket line with a can. She also was arrested by the North Haven police for this conduct. This conduct was part of the prima facie evidence of violations found by the Board.

6. Diane Nurse

a. On March 19, 1990, she threatened to break the legs of a nonstriker.

b. On June 25, 1990, she threatened a nonstriker with physical injury. (McMahon testified that she said, “We know where you are; you ass is grass, you f—king bitch.”) (Tr. 392.)

c. On August 29, 1990, she blocked the ingress of an employee.

d. On October 11, 1989, she threatened to cut up Pierrette Keating’s face.

e. On November 22, 1989, she was arrested for throwing a can of soda at a car driven by Jean Mettler. (Mettler is the

wife of one of Respondent’s owners.) She was arrested for this incident.

7. Willie Vasquez

On August 23, 1990, Vasquez laid on a hood of an employee’s car and threatened “Hey lady, you die lady, you f—king whore.” He also pounded on the hood with his fists and blocked the ingress of an employee. (McMahon’s testimony substituted the word “bitch” for “whore.”) (Tr. 394.) This conduct was also alleged as a violation of the Act in a complaint issued by the Board to the Union.

With respect to his investigation into these incidents, McMahon testified that considered the material contained in General Counsel’s Exhibit 17, had conversations with some people concerning what was happening to them as they were coming through the picket line and relied on information from the Board’s Regional Office.

In *Clear Pine Mouldings*, 268 NLRB 1044 (1984), the Board held that an employer may legitimately deny reinstatement to strikers whose strike misconduct, under all the circumstances, reasonably tends to coerce or intimidate employees in the exercise of their rights protected under the Act. In determining that issue, the Board utilizes a shifting burdens test. Initially, the General Counsel must establish that a striker was denied reinstatement for conduct related to the strike. *Rubin Bros. Footwear*, 99 NLRB 610 (1952); *General Telephone Co.*, 251 NLRB 737 (1980). Once that is established, the burden of going forward shifts to the employer to demonstrate that it had an honest belief that the striker had engaged in strike misconduct. *Rubin Bros. Footwear*, supra 611.

The Board in *General Telephone Co.*, supra at 739, held that:

The burden of establishing an “honest belief” of misconduct requires more than the employer’s mere assertion that an “honest belief” of such misconduct was the motivating force behind the meting out of discipline. Meeting the burden also requires more than a general statement about the guidelines used in establishing the alleged “honest belief.” Rather, it requires some specificity in the record, linking particular employees to particular allegations of misconduct.

Once the employer meets its burden of establishing an honest belief, the burden of going forward shifts back to the General Counsel to prove that the striker did not, in fact, engage in the alleged misconduct, or that such conduct was otherwise protected. *General Telephone Co.*, supra at 738–739. The burden can then shift back to the employer to rebut such evidence. *Rubin Bros. Footwear*, supra at 611.

As part of the General Counsel’s opportunity to show that the conduct was otherwise protected, the Board has held that an employer engages in disparate treatment when it discharges striking employees for engaging in violent conduct on the picket line, but fails to discipline nonstriking employees who engage in comparable or more serious conduct on the picket line. *Aztec Bus Lines*, 289 NLRB 1021 (1988). *Cartridge Actuated Devices*, 282 NLRB 426 fn. 1 (1986).

The Board, however, has found no unlawful disparate treatment where the employer undertakes a “thorough investigation” of the conduct of employees who were not dis-

⁶During the strike, Respondent contracted with a company named Boardsen Associates, Inc., to provide security for the facility. Boardsen provided security guards, who, inter alia, provided reports of anything unusual that they observed and to an extent, investigated incidents of alleged misconduct.

charged for strike misconduct (*Fibreboard Corp.*, 283 NLRB 1093 (1987)), or where the employer had less conflicting and more convincing evidence of the striker's culpability for the offense charged, thereby justifying the failure to discipline a nonstriker accused of strike misconduct (*New Galax Mirror Corp.*, 273 NLRB 1232 (1984)).

In the instant proceeding, the General Counsel does not argue that the seven strikers in question did not engage in the conduct that McMahon testified that he relied on in deciding to discharge them. There is substantial evidence in the record to indicate that the seven actually did engage in such conduct. I find that the conduct of these strikers as detailed in this record is the type conduct for which an employer may legitimately deny reinstatement. *Clear Pine Mouldings*, supra. The General Counsel contends, however, that Respondent did not have an honest belief that the conduct was sufficiently serious to justify discharge. He argues that the lack of an honest belief is established by the fact that Respondent engaged in disparate treatment when it refused to reinstate the strikers, but failed to discipline nonstriking employees for engaging in comparable conduct; that Respondent condoned the conduct of the strikers; and that Respondent's unfair labor practices that provoked the strike are sufficiently egregious when compared to the alleged actions of the discharged strikers to warrant an order of reinstatement.

In support of his argument of disparate treatment, the General Counsel points to allegations of misconduct by nonstrikers which did not result in discipline, and urges that Respondent's investigation into these allegations falls short of the type of thorough investigation required by the Board in *Fibreboard Corp.*, supra. The allegations of misconduct by nonstrikers and evidence surrounding Respondent's investigation into them are set forth below.

On July 10, 1990, Lambiase sent McMahon a letter informing him that nonstriking employee Ramon Irizarry, and two other unidentified males, attacked striker Gary Cymbala and his vehicle with a metal pipe, damaging the vehicle's roof and windows. McMahon testified that he contacted Irizarry at work and confronted him with Lambiase's allegation. Irizarry denied it and said he had no part in the incident. Nothing more was done by the Respondent in connection with this allegation, and a letter was sent to Lambiase stating the Respondent had investigated the incident and determined that the claim made about Irizarry was unfounded. Nothing more about the incident was received from the Union.

On September 6, 1990, Lambiase sent a letter to one of Respondent's owners, Jack Mettler, asking for payment of bill for an ambulance and medical treatment for the daughter of striking employee Tina Jendrezewski, who was allegedly injured at the picket line by a car driven by a Lisa Jones. McMahon testified that he was asked by Mettler to investigate this alleged incident. He checked with Boardsen Security who told him the policeman on duty at the time had checked the allegedly injured girl and found no injury. McMahon also reviewed the police report of the incident which indicates to me that Jones was driving safely and apparently did not strike the other person with her car. Lambiase's letter to Mettler was sent almost a year after the incident allegedly occurred. No earlier complaint about the incident had been made to Respondent. Respondent wrote the

Union on September 10 disclaiming any responsibility for any injuries to Jendrezewski's daughter.

On November 6, 1990, Lambiase sent a letter to Respondent's owners complaining that nonstriking employees were recklessly endangering picketing strikers and listing several specific examples as follows:

On October 16, 1990, Betty Wiegand, driving a red van license plate 505 GTJ, sped across the yellow line narrowly missing Mark Adams and several other picketing strikers. McMahon testified that he spoke with Wiegand, who told him though it was tight on the picket line, she did not come close to any strikers.

Routinely, Rose Hazel deliberately crosses the yellow line threatening the picketers with physical injury. McMahon spoke with Hazel who told him that she may have had a close call, but was not threatening the strikers. She added that she was not close to coming into physical contact with the strikers.

On October 24, 1990, at approximately 7:00 AM, Tony Leigh drove into the picket line narrowly missing Dorothy Johnson, Arcilio Vasquez and Marion DeMaio. McMahon spoke with Leigh, who told him she had no knowledge about the alleged incident.

On October 23, 1990, a blue station wagon with license plate number 606 ARX drove right into the pickets.

On October 29, 1990, a car with license plate 574 GAZ, crossed over the yellow line into the picket area narrowly missing several strikers.

With respect to the last two alleged incidents, McMahon testified that he did not know what they were about. He was unable to corroborate any of these incidents and there were no police reports made with respect to them.

The Respondent, by one of its owners, replied to Lambiase's letter pointing out that the nonstriking employees had been advised frequently of the regulations governing entering and leaving the facility. He also stated that entering and leaving was made difficult by the picketers' actions which made concentrating on driving difficult. He advised that he would continue to inform employees about the proper procedures.

I do not believe any of the above referenced incidents are comparable or more serious incidents of misconduct than those committed by the seven discharged strikers within the meaning of *Aztec Bus Lines*, supra, with the exception of the incident involving Irizarry. The Respondent did investigate this incident and in the face of Irizarry's denial of any responsibility, had no basis for discipline. Certainly, if the Union had any proof of Irizarry's involvement, it would have supplied it to Respondent. I believe Respondent made an adequate investigation of the remaining allegations as well. As there was a policeman at the picket line, and as Boardsen Security was shown to document any unusual events, the lack of any police reports or Boardsen reports about the alleged incidents calls into question whether they occurred. As was the case with Irizarry, the Union supplied no further substantiation of its claims beyond the first letter making allegations.

On January 2, 1990, Lambiase sent a letter to Respondent's owners which noted that striking employee Ariva Flynn

was receiving threatening phone calls. No one is named as an alleged suspect with respect to these calls.

On June 14, 1990, Respondent's supervisor, Merle Ames, was arrested for reckless driving in connection with an incident that occurred at the picket line. The Union filed a charge about this incident, the Regional Office issued a complaint, and a hearing was held to determine whether the incident was an unfair labor practice. I am unaware of the outcome of that proceeding. However, I believe the proper question with which I am confronted is whether Respondent, which did not discipline Ames for this incident, properly investigated it and acted in a manner consistent with its treatment of the discharged strikers.

There was a North Haven police officer stationed at the picket line where cars entered and left the facility. Lines were drawn on the pavement and picketers were to remain behind these yellow lines. Nonstriking employees were advised to drive slowly in and out of the facility following the directions of the police and the Boardsen Security force.

In testimony given in the Board hearing on the alleged unfair labor practice charge, the arresting police officer testified that Ames, who was driving a motorcycle, came to a stop at his command on the main street in front the facility's gate. He was then commanded to proceed. In the opinion of the policeman, Ames accelerated too swiftly and his motorcycle was aimed in a direction that would endanger the picketing strikers. No one was hit. He arrested Ames after he followed him onto the property and found a billy club and a hunting knife stored on or in the motorcycle.⁷ Such items are illegal in Connecticut. Three other witnesses testified in the other proceeding in a similar fashion, adding that Ames came so close to one of the picketers that he had to jump back to avoid being struck by the motorcycle's handlebar. Three Boardsen Security guards on duty at the gate of the facility filed reports about the incident. Each of these reports would indicate that Ames was driving at a safe rate of speed and was not over the line separating the picketers from the driving lane.

Ames denied that he was driving recklessly, at an unsafe speed, or with any intention of hitting any of the picketers. He ultimately pled guilty to a charge of driving at an unsafe speed. At no time was Ames charged with intentionally trying to harm anyone with his motorcycle. There is no evidence he was threatening anyone before, during, or after the incident. Given this lack of intent, and in the face of the Boardsen reports which reflect that Ames did nothing wrong, I do not find that McMahon acted in a disparate fashion when he chose not to discipline Ames. In each of the incidents for which the seven strikers were discharged, there is an element of intent to coerce, intimidate, or threaten the victim of the incident. I believe this element seriously separates these cases from the ones the General Counsel relies on to show disparate treatment.

Additionally, one of Respondent's nonstriking employees on one occasion dropped his pants and "mooned" the strikers on the picket line. Boardsen Security brought this incident to the attention of McMahon, who discharged the em-

ployee because of inappropriate behavior, and because such behavior could increase the tensions between strikers and nonstrikers. I believe this action further supports the proposition that Respondent did not engage in disparate treatment of strikers and nonstrikers with respect to its reaction to strike misconduct.

Although I have not agreed with the General Counsel's first two grounds for finding Respondent violated the Act by not reinstating the seven involved strikers, I do agree with his contention that Respondent condoned the action of the seven strikers and for this reason violated Section 8(a)(1) and (3) by not reinstating them on their unconditional offer to return to work. McMahon testified that the decision to discharge the seven was made on January 31, after it received the Union's offer to return to work. He at that time reviewed the strike misconduct material he had available and determined that the seven involved strikers would not be reinstated.

In December 1990, McMahon testified at an unemployment compensation hearing before an appeals referee for the State of Connecticut. During the course of the proceeding, McMahon was asked by the appeals referee whether he would reinstate Frank Blazi if he applied for reinstatement. McMahon answered that he would. In response to a similar question regarding the remaining strikers seeking benefits, including at least five of the other six strikers not offered reinstatement, McMahon also answered that they would be reinstated if they applied for it.

McMahon testified that at the time of the compensation hearing:

[N]o consideration had been given to the serious strike misconduct with regard to the outcome, I considered the question to be kind of out of context, hypothetical if you will, and based on no decision being reached and really no investigation of all of the serious strike misconduct matters, on that basis, sure, if Blazi had re-applied for unconditional reinstatement, yes; put in that context, he would have been brought back to work.⁸

Contrary to McMahon's testimony set out above, all the evidence relating to the strike misconduct of the seven involved employees had been previously gathered and reviewed by McMahon. Charges of unfair labor practices had been filed by the Respondent against the Union over the incidents for which Respondent claims the seven were denied reinstatement. The preparation of these charges predates the unemployment compensation hearing.

The Board has considered condonation in a recent case involving strike misconduct. In *White Oak Coal Co.*, 295 NLRB 567, 571 (1989), the Board stated:

Recently, in *General Electric Co.*, 292 NLRB 843 (1989), the Board reviewed the doctrine of condonation. As set forth in *General Electric*, condonation applies when there is clear and convincing evidence that the employer has agreed to forgive the misconduct, to "wipe the slate clean," and to resume or continue the

⁷ There is no allegation or evidence that Ames brandished or otherwise threatened any of the strikers with these instruments. Ames gave reasons for carrying these items on his motorcycle. These reasons are not questioned and are wholly unrelated to the strike.

⁸ It should be noted that for whatever reason, Respondent did offer reinstatement to the seven employees on or about April 17, 1991.

employment relationship as though no misconduct had occurred.

In deciding whether an employer has condoned certain misconduct, the Board does not look for any "magic words" suggesting that the employer has forgiven the employee. Thus, the Board must examine whether all the circumstances establish clearly and convincingly that the employer has agreed to "wipe the slate clean" in regard to any employee misconduct. Certainly condonation is not to be lightly inferred.

McMahon testified in an official state proceeding, presumably under oath, that he would take back Blazi and the other strikers engaging in misconduct. He made the statement in response to a direct question from a state official. His testimony in such a proceeding has legal consequences and certainly he did not take his testimony lightly. He made the statement at a time when he was in full possession of all the facts on which he relied in denying reinstatement only a month or so later. No additional acts of misconduct are alleged to have been committed by the seven employees between the date of the unemployment compensation hearing and the date reinstatement was offered to the other strikers. If the appeals referee had not specifically named Blazi, perhaps McMahon could say that he momentarily forgot about the matter of misconduct because he did not make a connection between the unemployment compensation proceeding and the matter of strike misconduct. But by naming Blazi, against whom the Respondent had filed an unfair labor practice charge, the connection must have been made. I believe and find that at the unemployment compensation hearing, McMahon, a very experienced and professional personnel manager and the person charged with making such decisions, decided to overlook the strikers' misconduct, wipe the slate clean, and permit the continuance or resumption of the employment relationship.

As I have found that Respondent condoned the strike misconduct of the seven involved employees, and that no further evidence of misconduct postdating that condonation was shown to exist, I find and conclude that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to reinstate the seven involved unfair labor practice strikers on their unconditional offer to return to work.⁹

F. Did Respondent Violate the Act by Furloughing and Laying Off Reinstated Unfair Labor Practice Strikers?

As noted earlier, when the strike ended, Respondent offered reinstatement to all but seven of the strikers. Between February 11 and 18, approximately 80 of the strikers returned to work. The level of staffing of hourly employees at about this time is in question. Respondent's Exhibit 35, which purports to be an accurate count of all hourly employees at various dates between September 1989 and September 1991, reflects that on February 5, Respondent employed 294 employees, and on February 12, 354 employees. General Counsel's Exhibit 50, a list of named employees by department and job classification, reflects that as of February 12, Respondent had 388 total hourly employees, of which 342

hourly employees were in the bargaining unit. It is regrettable that this discrepancy was not noticed during the course of the hearing as both exhibits were relied on by the parties as being accurate. In an attempt to reconcile the differences in numbers between the two lists, I had a conference call placed in which counsel for the General Counsel and counsel for Respondent could offer comment. Respondent's position is that General Counsel's Exhibit 50 contains certain named employees who were not actually working at the North Haven facility on February 12, whereas Respondent's Exhibit 35 includes only those employees actually working. Thus, Respondent's Exhibit 35 does not include, but General Counsel's Exhibit 50 does include, 10 Mint Pac employees, 3 chemical technicians, 8 employees on leave of absence, 2 replacement employees who quit on or about February 12, and 15 strikers who indicated that they were returning to work, but did not actually do so. If these employees are excluded from General Counsel's Exhibit 50, it would reflect 350 employees as of February 12.

There is record testimony supporting Respondent's representations regarding the Mint Pac employees, the employees on leave of absence, and the chemical technicians. The General Counsel conceded that his exhibit 50 did include some strikers who indicated that they were returning to work but did not do so, though he was unaware of how many such persons there were shown on General Counsel's Exhibit 50. The General Counsel was understandably unwilling to accept those representations for which there was no record support, and was unwilling to reopen the record for further hearing. Although I am inclined to accept the representations of Respondent's counsel, it is really not necessary. The only real significance the numbers have is in relation to Respondent's record representation that its employee complement on February 12 did not exceed its prestrike employee complement, and was at or below its target of employing 368 employees as of February 12. If the 21 employees whose deletion is supported by record testimony are removed from General Counsel's Exhibit 50, it would reflect 367 employees. As this number is both below Respondent's stated target and below its prestrike employment levels, I am not concerned about the remaining employees Respondent contends should be deleted from General Counsel's Exhibit 50.

During 1990, the Respondent's involved employee level varied from about 300 employees to a high of 338, ending the year at the lower figure. During January 1991, the involved employee level varied from 297 to 292, based on Respondent's Exhibit 35.

During the strike, Respondent hired 116 replacement employees in the bargaining unit. According to McMahon, none of these employees were terminated or laid off by Respondent in order to make room for the approximately 80 returning strikers.

Beginning with the week of February 12, and continuing through the week of May 3, Respondent furloughed certain shifts of its employees. On brief, the General Counsel has made a representation of the exact levels of these furloughs based on comparison of various exhibits in the record. This representation, set out below, is accepted for purposes of this decision as it appears to be accurate. If it becomes necessary, any discrepancies which might exist may be brought to light in the compliance stage of this proceeding. During the workweeks ending February 15 and 22 and March 1, 8, and 15,

⁹Based on the foregoing findings, I do not believe it is necessary to make findings with respect to the balancing theory espoused in *NLRB v. Thayer Co.*, 213 F.2d 748 (1st Cir. 1954).

Respondent furloughed the first-and second-shift PTH department for two 8-hour shifts each; the first-shift STRIP/ETCH department for one 8-hour and one 4-hour shift; the second-shift STRIP/ETCH department for one 8-hour shift; the third-shift STRIP/ETCH department for two 8-hour shifts; the first and second-shift DRILLING department for two 8-hour shifts each; third-shift DRILLING department for one 8-hour shift; the first-and second-shift CU department for one 4-hour shift each; the third-shift CU department for one 8-hour shift; the first, second, and third-shift CU department for one 4/9-hour shift; the first-and second-shift DFSM department for one 4-hour shift; and the first-shift FINAL INSPECTION department for one 4-hour shift. In addition, the first-shift PR department was furloughed for 3-1/2 hours and the first-shift CU department was furloughed for 4 hours during the week ending May 3. Each of the furloughed shifts included returned strikers, and during the time that they were off on furlough there were replacement employees in other departments who remained on the job. Except for holidays, there were no other furloughs in 1991.

On March 1, Respondent informed the Union by telephone that Respondent intended to layoff some unit employees. The phone call was followed by a letter of the same date in which Respondent indicated that the layoff would include unit and nonunit employees and was due to current economic conditions, particularly the slowdown in the automotive industry. Subsequently, during the first part of March, Respondent laid off 38 employees in the bargaining unit. These included 30 replacement employees, 5 employees who were employed before the strike but did not participate, and 3 returned strikers. The latter three employees are alleged discriminatees Roxanne Richardson-Bartlette, Michael Sims, and Virgilio Dela Cueva. At the same time, Respondent reduced the salaried work force approximately 15 to 20 percent. More than 80 unit employees who were hired during the strike were not laid off. Both the furloughs and layoffs were accomplished in accordance with the Company's existing reduction in force policy.

Richardson-Bartlette and Sims both testified that they had prior training and experience in other departments where replacement workers continued to work during the time they were laid off. In addition, they testified that they asked McMahon if they could be moved to another department rather than be laid off, but McMahon refused their requests. Such transfers are not part of Respondent's reduction-in-force procedure.

The General Counsel does not dispute Respondent's claim that business was slow and that there was insufficient work at Respondent's North Haven facility to employ all of Respondent's unit employees in late February and early March when the furloughs and layoffs took place. However, on brief, General Counsel contends that this condition did not arise suddenly, and that it had existed for some time prior to February 11 when the first of the strikers returned to work. When Respondent reinstated the unfair labor practice strikers without terminating any of the replacements, it was creating a labor surplus, and in so doing, it returned the strikers to something less than their former positions. Respondent knew, or should have known, that under the business conditions that existed as of February 11 and 18, furloughs and/or layoffs were inevitable. In support of his contention that Respondent's actions alleged above violate the Act, the General

Counsel relies on the case of *Stanley Building Specialties Co.*, 166 NLRB 984 (1967). He further contends that the law requires that the reinstatement rights of unfair labor practice strikers be given priority over the rights of persons hired to replace them during the strike, citing *Chesapeake Plywood, Inc.*, 294 NLRB 201 (1989). By furloughing and laying off reinstated unfair labor practice strikers within a matter of a few days after they were reinstated and at a time when replacement workers continue to work, the General Counsel asserts Respondent violated the Act.

In *Stanley Building Specialties*, supra, the Respondent employer had a work force of about 210 employees prior to an unfair labor practice strike. During the strike, because of some increased business, it not only replaced striking employees, it hired about 40 additional employees. When the strike ended, the Union made an unconditional offer to return to work and on April 5, 1965, the employer offered reinstatement to the strikers. A few days later, the employer reinstated 105 strikers without discharging any replacement employee or other employees. On May 1, following a directive from the Respondent's parent company, 42 employees, including a number of strikers were laid off. The General Counsel alleged that the layoff violated the Act because the Respondent failed to discharge replacement employees and created an artificial labor surplus. The Board agreed, *id.* at 986:

It appears from the record that Respondent did have an increase in business during the strike, and hired, over and above the 168 employees needed to replace the strikers, some additional employees which increased its payroll, including the 44 nonstrikers, to approximately 240 or 250 employees. With the return of a substantial number of the strikers, its payroll swelled to about 350 employees. However, Respondent introduced no evidence to support its contention that the subsequent layoff was caused by a decline in business. Indeed, the record shows that the parent company ordered Respondent to effect a layoff only after a majority of the strikers were returned to work, which increased the work force, according to Burger's testimony, "by 100 to 105 people more than what it normally would be at that time." Thus, it becomes abundantly clear that the layoff resulted from the existence of a labor surplus created by Respondent's own failure to discharge strike replacements as the strikers returned to work.

Respondent contends that its actions are factually dissimilar to those in *Stanley*. Primarily it argues that it had legitimate business projections at the time of reinstatement that would justify an hourly employee level of about 368 employees. At no time did the employee complement exceed that level. It further contends that it produced substantial evidence showing an unexpected business decline shortly after reinstatement which dictated the furloughs and layoffs. It also contends that union animus played no part in the furloughs and layoffs which were accomplished in accordance with its normal reduction in force procedures. I agree with Respondent that the furloughs were unavoidable even if the Respondent had discharged replacement employees at the time strikers were reinstated. The question of the layoff is much closer. As will be shown below, the employer apparently had the

capability of achieving its projected production levels with an hourly employee complement somewhat lower than the 368 employees it offers was its target staffing level. The decision not to discharge any replacement workers when the strikers were replaced appears to me to be combination of a little wishful thinking, some legitimate business expectations, and a desire by the Respondent's owners to live up to a pledge to replacement workers that they would not be discharged at the conclusion of the strike.¹⁰

Respondent did present an economic defense to the allegations that it allowed a labor surplus to occur by reinstating strikers and not discharging replacement employees. The General Counsel criticizes this evidence as being unsupported by any documentation. I cannot agree. As far as I can determine from the record, the General Counsel and counsel for the Charging Party were afforded the opportunity to see the documentation which Respondent relies on to make its business projections and its actual production and shipping figures. The information relied on by Respondent was used in the normal course of its business and was made known to its employees in periodic presentations as was its practice. I cannot find good reason to doubt the accuracy of the information presented or the veracity of Respondent's primary witness on this issue. In this regard, it presented the testimony of Vice President of Manufacturing David Schumacher. He testified that Respondent manufactures circuit boards for a variety of uses, primarily in the automotive industry, where by far its biggest customer is the Ford Motor Company. Its circuit boards come in a variety of sizes, finishes and configurations to meet the specific needs of its customers. They are produced on a very short inventory cycle, in response to a customer's specific needs. It does not build product for inventory, and generally operates on a 13-work-day manufacturing cycle for production of a circuit board from start to shipping.

Because of the varying requirements of its customer, some or all of its departments may be involved in the production of a particular order. Thus, some of its departments may be very busy while others are not, depending on the work mix. With respect to its relationship to Ford Motor Company, Schumacher testified that it has a long-term contract where it is insured a certain volume of work. Thus at the beginning of the year, based on Ford's manufacturing projections, it has a good rough idea of the total amount of product it will produce for Ford. During the year, Ford and its other customers give it short term releases ranging from a week to month, specifying how much and what type boards they want manufactured and shipped to them within that timeframe. In order to be able to actually comply with these customer demands, Respondent stays in almost constant communication with them, so it can anticipate their needs as far in advance as possible. Once a customer has given Respondent a release, it is obligated to take the product ordered. However, it is not obligated to take the product at any given time. Thus, if a customer's business falls off, its orders for shipment of product ordered may also fall off, affecting the level of Respondent's production for either a short period or a longer period, depending on the level of the customer's business decline.

Respondent does not want to keep any excess inventory as it adds to costs and it may not be able to predict which of its product to inventory, as customers requirements change. As a normal matter, Respondent has only a few hours to a day's production in inventory. Because of the uncertainty in the business, Respondent prepares its production plans based on the annual forecasts given it by its customers, revised by releases as they come in, and by revisions in the releases based on the best guess of Respondent as to when the customer will actually want shipment. Its production plans determine the level and mix of staffing the Respondent anticipates it will need. To the extent possible Respondent attempts to keep staffing as level as possible.

Its production plans, which are for daily, weekly, monthly, and quarterly production targets, are stated in "lots" of product. A "lot" is composed of a number of boards. Until the fourth fiscal quarter of 1990, the established number of boards per lot was 96.¹¹ This was reduced to 80 in that quarter. If the company targets making 250 lots a week and actual shipping orders are as much as 20 to 25 lots lower than projected, depending on whether the drop is short or long term, the company must make staffing changes. A short-term drop might result in furloughs whereas a long-term drop may result in layoffs.

Schumacher testified that as a result of short-term drops in demand, the Respondent had furloughed employees in the past. The company does not lay off employees because of short-term drops, because of the continued validity of its production plan which would call for the retention of all employees to be able to meet production needs. At the time the strike began, the Respondent had approximately 391 hourly employees and a lot production of about 250 lots per week. At the beginning of fiscal year 1991, the company heard from industry sources that demand would be off about 15 percent compared with the previous year. The quarter started with anticipated production 240-250 lots per week. During the quarter, production was scaled back to about 215 lots as the rumors proved true. At this point the company introduced a hiring freeze. Based on information he was receiving, at this point, Schumacher felt that the earlier projected demand of 240 lots per week would be valid in the second quarter of the year, though it was not being met at that time.

At about the same time, the Respondent was experiencing severe swings in demand on a short-term basis, causing some departments to be so busy that overtime was required one week, then not having enough work to fully utilize personnel the next week. At the end of calendar 1990, the Company furloughed employees over the holiday period as its customers shut down operations. According to Schumacher, Respondent was still receiving word from its customers that business would pick up in 1991. Schumacher testified that the hiring freeze was not lifted at this time because Respondent was hearing that the strikers were coming back to work. When they did come back, some were badly needed in some departments, but not in others because equipment changes had made the departments more productive and not so labor intensive.

¹⁰ See C.P. Exh. 6, which in part states: "NO EMPLOYEES WORKING AT CIRCUIT-WISE WILL BE DISPLACED BY ANY STRIKERS."

¹¹ The Respondent's fiscal year begins October 1 and ends September 30. Thus, the quarter in question would be July through September 1990. The first quarter of fiscal year 1991 was October through December 1990.

As of February 12, the Respondent had a need for an hourly staff of 368 employees, to meet its 244 lot projection. According to Schumacher, Respondent was shipping at this level in early February. However, as the month progressed, the Respondent began to experience a sharp decline in demand which he blames on the Gulf War, and its effect on consumer purchases of automobiles. In February, the Respondent instituted its furloughs, rather than a layoff, because it still had releases which would justify full employment, though requests for shipment were down. The Respondent attempted to minimize the impact of the furloughs by rotating the shift that was furloughed. Employees in departments that were being furloughed were not shifted to other departments to avoid furlough because the other departments had no need for more employees.

By the end of February, the continued drop in shipments and furloughs at Ford plants caused Respondent to adjust its production plan to one calling for 219 lots per week. This lowered production level triggered the layoffs on March 7. In May and June, attrition in the bargaining unit and increased production back to the 240 lot level allowed all laid-off employees to be recalled. Although Respondent thereafter continued to operate at the higher levels of production, it did not bring its employee complement back to the prelayoff level. It contends it did this through increased productivity.

The furloughs were spread among various shifts to minimize their impact on employees. Because of the very short-term nature of the furloughs, Respondent contends and I agree that transfers across department lines was not feasible. Additionally, unless Respondent were able to man certain machines and functions in its various affected departments with only reinstated strikers on one shift and replacements on another, it does not seem feasible to furlough only replacements. The two classes of employees were totally mixed in each department's crewing and, thus, I believe it would have been virtually impossible to furlough only replacements and still have a department continue to function. Although Respondent clearly has an ongoing and very strong dislike of the Union, I do not believe this animus played any part in the decision to furlough and lay off employees.

The layoff was accomplished pursuant to the Respondent's existing reduction-in-force procedure, which did not call for the transfer of employees from department to department to avoid layoff. Following this procedure, the vast bulk of employees laid off were replacement employees. The layoff was triggered by what proved to be a 2-to 3-month precipitous drop in shipment requests, over which Respondent had no control and which it could not accurately anticipate. Respondent did have orders, or releases, which appear to legitimately justify an employee complement exceeding that which existed after the strikers were reinstated. Therefore, as I find that Respondent had a legitimate basis for not discharging replacement workers when it reinstated the strikers, and as it has shown that a serious and unforeseen business downturn occurred shortly after reinstatement which forced the furloughs and layoff, I do not find that it created a labor surplus by not discharging replacement workers at the time of reinstatement of the strikers, as was the case in *Stanley Building Specialties*. Accordingly, I do not believe that Respondent had violated the Act in this regard as alleged in the consolidated complaints.

G. Did Respondent Unlawfully Make a Unilateral Change in Its Rule Regarding Leaving the Facility and in Connection with that Change, Unlawfully Threaten Its Employees?

Respondent's rule on leaving its property during meal breaks is set forth on page 15 of the employee manual under the heading "Hours of Work." The pertinent portion of the rule reads as follows:

You are provided with one 20-minute meal break per eight-hour shift. This time is incorporated into your regular work day and does not require punching out or punching back in unless you are leaving the property during this break period. In that case, you will punch out and punch back in upon your return to Company property and your work. Your supervisor must be notified in advance when you plan to leave the property during your meal break.

As part of a march across part of Connecticut in August, the Reverend Jesse Jackson, in conjunction with the Union, planned to attend a rally and barbecue outside the Respondent's facility at 11:30 a.m. on Tuesday, August 13. The Union publicized the event and published a flyer inviting the Respondent's employees to punch out at lunch and join the barbecue and hear Reverend Jackson speak. The rally was a union activity and participation in it was protected by the Act.

In response to this invitation, the Respondent issued to its employees an owners' report on Monday, August 12. In pertinent part, this report states:

Tuesday, August 13, 1991 will be a regular work day at Circuit-Wise, Inc. and all work rules will apply as normal. In order that there be no confusion or misunderstandings, a few of our rules are restated below. Please refamiliarize yourself with them.

1. All employees are expected to be at their jobs during normal working hours.

2. [The rule for leaving the property set out above is restated.]

3. Failure to be attentive to the details of your job duties during your scheduled hours of work is a violation which would call for the appropriate step of corrective progressive disciplinary action.

4. Leaving the Circuit-Wise premises *without getting permission of management* and without punching out is a violation of company rules which calls for dismissal. [Emphasis added.]

We wish the Reverend Jackson and the Rainbow Coalition the best with their program and are confident that they understand our need to enforce our rules and remain at work in order to be world wide competitive in these most difficult economic times.

Employees who testified about the rule for leaving the property said that they rarely ever notify their supervisor or ask permission to leave the property for lunchbreaks. The requirement that permission of management be obtained is in my opinion a substantial change from the written rule which only requires that a supervisor be notified when an employee intends to leave the premises for lunch. Not only did Re-

spondent in its owners' report change the rule, it emphasized the change by clearly tying it to a threat of dismissal. I find that the Respondent, through the device of its owner's report, violated the Act on two grounds.

First, the owners' report announces a change in Respondent's policy on leaving its property during the meal break. The change represents a departure from the existing policy as published and practiced. Plant rules pertaining to breaks are mandatory subjects of bargaining. *Harris-Teeter Super Markets*, 293 NLRB 743 (1989); *Production Plated Plastic*, 254 NLRB 560, 565-566 (1981). Accordingly, as Respondent made and announced a significant change in its leave policy without affording the Union notice and the opportunity to bargain over it, Respondent violated Section 8(a)(5) of the Act.

By warning employees that they could be dismissed if they left the plant without permission to attend the rally, Respondent was telling employees that they could be dismissed for engaging in protected activity. In view of the fact that the threat of discharge was made not in the context of an existing rule, but rather in the context of an unlawfully changed rule, such a threat is a violation of Section 8(a)(1) of the Act. *Saint Vincent's Hospital*, 265 NLRB 38, 42 (1982).

*G. Did Respondent Violate the Act by Threatening,
Warning, and Discharging Its Employee,
Hopeton Genus?*

Hopeton Genus was first employed by Respondent on November 3, 1989, during the strike. He worked as a machine operator in the HASL department on the first shift (7 a.m.-3 p.m.). His immediate supervisor was Leadperson Krystyna Lech. The HASL department is supervised by Merle Ames, who in turn reports to Plating Department Manager William Abbate. Between mid-June, and August 1991, Genus was given a written warning, allegedly threatened with discharge for his union support, suspended, and discharged for refusing to attend a meeting with his supervisors. Each of these actions by Respondent toward Genus is alleged as a violation of the Act.

Genus did not become a member of the Union until March 1991 and had evidently had no disciplinary problems at the facility prior to becoming a member. His problems began at about 7:30 a.m., on June 10, when Genus suffered a chemical burn to one of his hands. He testified that he was told by his leadperson, Lech,¹² to wash out a barrel which had contained a chemical. According to Genus, there were several barrels in the area, and he asked which one she wanted cleaned, touching one and burning his fingers in the process. Lech informed Ames of the injury and Ames took Genus to the company nurse. The nurse referred him to a private physician, who treated the burn, and sent Genus back to work at about 1 p.m. He worked until the end of his shift with no further contact with management. The next day, Ames approached Genus, inquired about his hands, and told him to have the nurse look at them. On this date, Genus wore his union button on his shirt. According to Genus, both Lech and Ames saw the button.

On June 15, Genus went to see Ames and complained that his fellow workers were treating him unusually, either staring at him or ignoring him. According to Genus, Ames said that

the treatment was in response to his wearing his union button, as many of the employees were upset about events which occurred during the strike. According to Genus, Ames then told him, "I could fire you for that." Ames did not specifically deny having this meeting and did admit having meetings on unspecified dates in June when Genus made a point of having Ames notice his union tee shirt or union button. Ames did deny the threat, however. I credit the denial. Ames, though obviously harboring a great deal of animosity toward the Union stemming from the picket line incident discussed earlier, appeared to me to be a person not likely to make gratuitous threats. As I do not believe he made the threat, I will recommend this complaint allegation be dismissed.

On June 17, Genus was called to Ames' office where he was given a disciplinary warning by Ames and Plating Department Manager Abbate. He was given a written warning, which reads in pertinent part:

Although I have, on several occasions, communicated with you about the need to follow safety guidelines and perform your job duties in a safe manner, you continually choose to ignore the guidelines which are in your best interest. Your violations include, but are not necessarily limited to, failure to wear appropriate protective devices, including wearing apparel. Since you have chosen to not be in compliance with the rules with which you are entirely familiar, I am giving you a final written warning with the expectation that you will, in the future, honor all safety rules which are intended to protect your health and enhance your safety. If in the future you are in violation of this or any other Company rule, you will receive a more severe form of corrective, progressive disciplinary action, including discharges. This is a FINAL warning notice.

According to the credible testimony, employees in the HASL department were required to wear gloves when handling chemicals, including drums which contained or had contained chemicals. By not wearing gloves when he burned his hand, Genus evidently violated Respondent's plant rule b-6, violation of safety and smoking rules. The rules provide that a person committing this offense will be given a disciplinary action notice for the first offense, a disciplinary suspension for the second offense and discharged for the third offense.

Genus said he was not working when he was burned, rather he was just verifying what he was supposed to do. He refused to sign the warning because it was a "final" warning and he had not received any prior warnings. Lech testified that she had trained Genus and he was familiar with the company rule that requires using gloves when dealing with chemicals, including handling barrels that had contained chemicals. She testified that she had Genus move barrels or drums two or three times a week, and often had to remind him to wear appropriate safety apparel. On the occasion he was burned, she testified that she had instructed him to clean and move two drums. One of the drums had contained sulfuric acid. According to Lech, she told him to use gloves and he did. However, while moving one of the drums, he removed his gloves and at that time burned his hand. Later that day, after Genus returned to work, he touched another drum

¹² Both Ames and Lech are admitted statutory supervisors.

with his bare hands while Lech watched to show her that nothing would happen. She reported the incident to Ames.

Ames testified that he gave the written warning to Genus because he had purposely ignored Lech's instructions to wear gloves. He contrasted this situation to an incident occurring in May when Genus was verbally reprimanded for carelessly waving a welding torch. As there was no intentional violation of the safety rules on this occasion, Genus did not receive a formal warning.

The General Counsel contends that Ames gave Genus the written warning for discriminatory reasons. He cites Ames' animosity toward the Union, the fact that employees are not uniformly given written warnings for safety violations, and the fact that the warning was not given until almost a week after the incident, an interim period in which Ames became aware of Genus' union support. He also relies on the alleged threat by Ames, which I do not credit.

Both Ames and Lech deny seeing Genus wearing union insignia until about 2 days after the written warning was issued to Genus. I credit Genus' testimony that they learned of his support before the warning was given. Lech was demonstrated to have a very poor memory with respect to dates, and thus her testimony about when she first saw Genus wearing union insignia is suspect. According to Lech, Genus was the only employee in her department to wear union insignia or clothing. She testified that several employees made a point of telling her that Genus was wearing a union button.

I believe this is consistent with Genus' testimony that he had a June 15 meeting with Ames to complain about his coworkers' treatment of him. Ames also denies learning of Genus' union support until 2 days after the warning issued. However, this ignores the fact of the June 15 meeting, which I find occurred. I therefore find that Respondent did have knowledge of Genus' union support at least as of June 15. Given the fact that the General Counsel has shown Respondent harbored union animus, had knowledge of Genus' union support, selectively enforced its safety rules, and in consideration of the timing of the warning, I find that a prima facie case of discriminatory motivation has been made as required by the Board's holding in *Wright Lines*, 251 NLRB 1083 (1980). Accordingly, the burden shifts to Respondent to show that it would have taken the same action against Genus even in the absence of his union support. I believe Respondent has met this burden.

I accept Respondent's testimony that Genus was given the warning for intentionally touching a chemical drum without wearing gloves, and not simply burning his hand having forgotten to wear gloves. The testimony of Lech, a coworker, Mary Rose San Juan, and Ames is consistent on this point. On the other hand, Genus' testimony about the incident was defensive and I believe, somewhat less than candid. I do believe that Genus' union activity played a part in his discharge, but not in this warning. By the time of his discharge, Genus had become much more outspoken in his support of the Union than was the case in June when he simply wore union insignia. The matter of delay between the incident and the issuance of the warning was adequately explained by Respondent's procedure of having proposed discipline approved by various levels of higher management, including receiving the approval of McMahon. This procedure could easily result in a delay such as occurred with Genus. I find that Respondent issued Genus a written warning for violating its safety

rules for legitimate business reasons and thus did not violate the Act as alleged.

In the next month and a half, the evidence indicates that resentment toward Genus by Respondent's management and those of his coworkers who did not favor the Union increased steadily. In this regard, Lech testified that Genus was the only union supporter in the department. One of his coworkers, San Juan, testified that Genus became nervous when Ames was around. Genus testified that his coworkers continued to treat him in a strange manner. Most significantly, in management's eyes, Genus had changed and they found fault in his behavior and performance with increasing regularity. Ames testified that Genus appeared tired at work, and both he and Lech testified that Genus began regularly dozing at his work station. Lech also testified that she caught Genus smoking, a violation of the same rule under which he received the written warning in June. She testified that one of Genus' coworkers reported to her that Genus referred to Ames and Abbate as "assholes," and gave them the "finger" when they were not looking. Lech began noticing that Genus was late in returning from lunch and breaks. Apparently every incidence of actual or perceived misconduct by Genus was dutifully reported to higher management rather than being handled immediately on the spot.

In Genus' personnel file were "Situation Sheets" which detailed some of the alleged rule violations committed by Genus. One dated July 24, 1991, and signed by Abbate and Ames notes that Genus was caught smoking, and contains a notation under the heading "recommended solution," "next step in progressive discipline." Lech testified that Genus asked on this occasion if he was going to be fired. She told him that was not up to her, she was only going to bring the matter up with her supervisor, Ames. Abbate testified that he attempted to have Genus disciplined over this incident, which would have been a suspension, but was overruled by McMahon because the no smoking rule was fairly new. However, he did speak with Genus, warning him not to repeat the offense. In response to Genus' inquiry of him as to whether he would be fired for this offense, Abbate replied there was no discipline involved *at this point in time*. Another situation sheet, dated August 15, 1991, notes that Genus responded to a question from Ames by saying, "What the f—k do you care." It also notes Lech's reports that Genus was returning late from breaks and dozing on the job. This sheet also recommends that the next step in progressive discipline be taken. Lech's second-hand report that Genus was giving his supervisors the "finger" is also noted in the situation sheets.

I believe this stepped up observation of Genus by his supervisors and their attempts to record any transgressions was not prompted by legitimate concerns about his performance, but were directly the result of a growing animus toward him based on his union activity. Both Ames and Abbate told Genus in late June that he had changed and that people did not like him because he had joined the Union. That this dislike extended to management became clear on August 6, 1991.

The Union regularly circulated a news bulletin within the Respondent's facility. The August 6 edition of the bulletin contained an article written by Genus, entitled "Stand Up for Your Rights," and which reads:

I joined the Union a couple months ago because I felt it was a better way. It's for the people. The Union makes people stronger. I feel good now that I did. It built me up. I know I'm a part of something and no one can take that away from me. Even if the supervisors don't like it, I know I'm doing something good for myself and the rest of the workers. Don't let anyone try to scare you. Do what you have to do. Don't be afraid, it's your life.

On August 6, Genus asked Abbate if he could transfer to another department because he was having trouble in his department. Abbate told him the people did not like him because of his union button, his activities, and the article he had written. He also told him that the Union was using him for its dirty work.¹³

According to Ames and Lech, on August 15, 1991, Ames, at the urging of Lech, decided to talk with Genus about the alleged matter of his returning late from breaks. Ames testified that he approached Genus in his work area and asked him to come to his office. Genus refused. Ames said he did not know how to respond to this situation, so he reported the matter to Abbate and the two of them discussed it with McMahon. McMahon said he would speak to the Respondent's attorney and get back to them with instructions. Also on August 15, Genus asked Ames for a meeting with Abbate, and a meeting was scheduled for August 16, 1991. Genus changed his mind and prior to the meeting told Ames to call it off. By the morning of August 16, McMahon had discussed the matter of meeting with Genus with Respondent's attorney and Ames and Abbate had been instructed on how to proceed.¹⁴ For the reasons set forth in the footnote below, I do not believe the testimony of Respondent's witnesses about Genus refusing to meet with Ames on August 15, and that the reason for the August 16 meeting was to discuss Genus' returning late from break. As noted in the footnote,

¹³ Genus testified that he wore his button on several occasions and also wore a union T-shirt.

¹⁴ Genus denies returning late from breaks or being counseled about it by Lech. The written evidence in the record tends to support his testimony. The August 15 situation sheet does mention that Genus was a few minutes late returning from break on August 13, 14, and 15. However, there is no mention of any reprimand or counseling being given to Genus by either Ames or Lech. Of more significance is a written report prepared by Lech and Ames detailing their problems with Genus on August 15. This report indicates that Lech had assigned Genus to run a particular machine, and he was observed by Ames running another machine. Lech confronted Genus about this and he asked if Ames had sent her. She reported this to Ames, who called Genus to his office for an explanation. Genus willingly went to Ames' office and told Ames that he was not working on the machine assigned him because it required him to stand and he was tired. Ames required him to work on the assigned machine. A second entry on the report notes that Genus requested a meeting with Abbate over this situation. There is absolutely no mention of returning late from breaks being discussed with Genus or between Lech and Ames. There is no mention of Genus refusing to come to Ames' office, and to the contrary, indicates he did go there at Ames' direction. Another report in Genus' file was prepared by Abbate on August 16, and was reviewed and approved by Ames. This report does not mention anything about a problem with Genus returning late or refusing to go to Ames' office. It states that the reason for the August 16 meeting was to discuss why Genus had canceled the meeting he had requested with Abbate.

a written report of the August 16 incident mentions as the only reason for the meeting the desire to determine why Genus canceled his requested meeting with Abbate. I really do not believe this reason either, and instead believe that Respondent had decided to get rid of Genus on August 16 and was looking for a reason to do so. Why else would Respondent's attorney have to be consulted. Certainly no legal advice would be necessary if all that was wanted was a reason Genus canceled his requested meeting.

Thus, on August 16, Genus was called to Ames' office. Genus believed that he was being asked to meet to discuss a letter he had written and shown to coworker Mary Rose San Juan that day.¹⁵ This letter, which is addressed to management, complains about his written warning, his "reprimand" by supervisors for writing the August 6 article and discrimination and harassment directed at him because of his union affiliation. When he went to the office, Ames and Abbate were there. Ames asked him to come into the office and Genus said he would rather talk with them from the doorway, a distance of about 3 feet. Ames and Abbate agreed and they began discussing the fact that Genus had requested a meeting and then canceled the meeting. During this discussion, Ames abruptly told Genus to come in and sit down because he had something that he wanted to inform Genus about. Genus asked what it was about, but Ames would not tell him. According to Genus, he asked for the presence of a Union steward or stewardess to represent him. According to Ames and Abbate, he asked only for "someone" to be present. Abbate admitted he assumed that Genus was requesting the presence of a union steward.

Ames then told Genus that he was the supervisor of the department, that he was giving Genus a direct order to come into the office because he needed to inform him of something. Ames said he would consider it insubordination if Genus did not follow his instructions. Genus refused and again requested representation. Ames said he would give him a few minutes to reconsider, pointing out that noncompliance would result in Genus having to punch out and see McMahon before he could return to work. Genus then said he wanted to see the Respondent's general manager or one of its owners. Abbate said no.

Genus continued to refuse to comply without representation, so he was sent home and told to contact McMahon before returning to work. He met with McMahon a few days later and was discharged for insubordination, the act of which was refusing Ames, direction as set out above. Genus testified that he asked for representation as he feared he was about to be disciplined. Ames testified that no discipline was

¹⁵ There was a question raised about whether management had knowledge of this letter. I believe it did. Though Lech denies ever seeing this letter prior to the hearing, she did admit that San Juan told her about some "notes" that Genus was preparing. San Juan admits reading the letter, but denies telling Lech about it. I do not believe her denial. San Juan was one of the employees identified by Lech as calling her attention to the fact that Genus wore union insignia. She obviously had no hesitation about telling Lech about Genus' union activity and was not herself a union supporter. I believe the "notes" Lech remembers San Juan telling her about was the letter. As Lech dutifully informed higher management about everything else Genus did, I am sure that she told Ames about the letter. Lech had also observed Genus talking with Union Steward Frank Blazi in the employee cafeteria that morning.

contemplated in the meeting, that it was only to discuss the matter of Genus returning late from breaks and lunch.¹⁶ However, no one told Genus that no discipline was involved in or could result from the meeting.

Employees have the right to request the presence of a union representative at meetings which they reasonably believe will result in discipline, and they have the further right to refuse to submit to interviews when their employer denies the request for union representation. *NLRB v. Weingarten*, 420 U.S. 251 (1975). Genus did make a request for union representation. Though Respondent contends he did not say steward in making the request, Abbate admitted he knew that Genus was requesting the presence of a steward. The Respondent's witnesses testified that the purpose of the meeting was not to administer discipline. However, this fact was not made known to Genus, and for that matter, the subject matter of the meeting was not made known to him. Genus testified that he believed that the meeting could result in discipline and I believe the objective evidence of record amply supports that view. He had previously been warned by Abbate about smoking and told that discipline was not going to be administered at that time. He had published an article noting his support for the Union and encouraging employees to stand up for their rights, an action mentioned negatively by Abbate. He had had a confrontation with Ames over not following Lech's work assignment the day before, and he reasonably believed that management was aware of his August 6 letter. I find that he reasonably feared discipline could result from the meeting based on objective evidence.

If the meeting was purely informational as Respondent contends, there would have been no valid reason not to inform Genus of the fact. I believe that the Respondent unlawfully denied the request of Genus to have union representation at the meeting in violation of his rights under *Weingarten*, in violation of Section 8(a)(1) of the Act. Respondent's witnesses testified that they discharged Genus solely because he insisted on his *Weingarten* rights and for no other reason, labeling his insistence on these rights to be insubordination. Because Respondent discharged Genus for this reason, it violated Section 8(a)(3) of the Act. *Salt River Valley Water User's Assn.*, 262 NLRB 970 (1975). I believe a make-whole remedy is appropriate for this violation. In *Taracorp Industries*, 273 NLRB 221 fn. 12 (1984), the Board held, "A make-whole remedy can be appropriate in a *Weingarten* setting if, but only if, an employee is discharged or disciplined for asserting the right to representation."

The General Counsel also contends that the discharge of Genus was motivated by Respondent's union animus and the reason given is pretextual. Though I did not agree that the written warning given Genus was discriminatorily motivated, I do believe his discharge was motivated by a desire to get rid of an increasingly vocal union supporter. As noted earlier, written reports about Genus' action and the response of Respondent were prepared contemporaneously with the events. These reports make no mention of Respondent calling Genus to the August 16 meeting to discuss returning late from breaks nor do they mention any refusal of Genus to comply

with Ames to come to his office on August 15. As Respondent obviously was documenting any and all transgressions of Genus at this time, I find these omissions of serious significance.

Moreover, seeking legal advice before meeting with Genus for allegedly nothing more than informational purposes seems to me to be highly suspect. Seeking legal advice before firing him seems more reasonable. There was no reason offered by Respondent for failing to inform Genus of the purpose of the meeting, and in the absence of such information, Ames' blunt direction to come in and sit down and refusal to allow him representation appear to me to be calculated to provoke a response that would allow Respondent to discharge Genus. In his followup meeting with McMahon, Genus accused Respondent of setting him up, an accusation with which I fully agree.

Respondent has offered no reason for Genus' discharge except for his lawful insistence on his *Weingarten* rights, making his discharge unlawful for that reason. I find it was likewise unlawful because I believe that reason to be pretextual and union animus to be the primary motivation for the discharge. I find that the General Counsel has met his burden under *Wright Line*, supra, and that Respondent has wholly failed to meet its legal burden of establishing it would have discharged Genus even in the absence of unlawful motivation. Accordingly, I find that Respondent's discharge of Hopeton Genus violates Section 8(a)(3) of the Act for this additional reason.

CONCLUSIONS OF LAW

1. The Respondent, Circuit-Wise, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union is the exclusive representative for purposes of collective bargaining of the following appropriate unit of Respondent's employees:

All full-time and regular part-time production and maintenance employees employed by the Employer at its North Haven, Connecticut facility including employees involved in the production of products for Mint-Pac Technologies, Inc., and chemical technicians; but excluding all other employees, leadpersons, office clerical employees and guards, professional employees and other supervisors as defined in the Act.

4. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by:
 - (a) Making unilateral changes in its health insurance plan for bargaining unit employees on or about April 1, 1991.
 - (b) Refusing to supply the addresses of bargaining unit employees pursuant to a proper request from the Union.
 - (c) Making a unilateral change in its employee work rule regarding leaving the Respondent's property during lunchbreaks.
 - (d) Refusing to supply the names of strikers to whom Respondent sent offers of reinstatement, but did not receive such offers.
5. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by:

¹⁶ Though for reasons set forth earlier, I do not believe that the purpose of the meeting was to discuss the returning late matter, I will accept Respondent's contention that no predetermined discipline had been prepared for presentation to Genus.

(a) By discharging and/or failing and refusing to offer reinstatement on or about January 31, 1991, to striking employees Frank Blazi, Gerald Burkett, Virgilio Bobis, Paul McCarthy, Janet McCutchen, Diane Nurse, and Guillermo Vazquez.

(b) By suspending the employment of Hopeton Genus on August 16, 1991, and thereafter, on August 20, 1991, discharging Hopeton Genus.

6. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act by threatening to discharge employees for a violation of its unilaterally changed work rule regarding leaving Respondent's property during lunchbreaks.

7. The unfair labor practices found to have been committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. The Respondent did not commit the other unfair labor practices alleged in the consolidated complaints.

REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, it is ordered to cease and desist therefrom and to take certain affirmative action deemed necessary to effectuate the policies of the Act.

Having found that Respondent unlawfully implemented changes in its health insurance plans for bargaining unit employees on April 1, 1991, Respondent is ordered to restore the status quo that existed just prior to its unlawful change, including observing the terms of its interim agreement with the Union covering health insurance, reimburse its employees for unlawfully increased employee contributions from April 1, 1991, until compliance with this Order is made, and make whole its employees for any other loss they may have suffered by virtue of Respondent's unlawful change in its health insurance plans, with interest.¹⁷

Having found that Respondent unlawfully failed to reinstate striking employees Frank Blazi, Gerald Burkett, Virgilio Bobis, Paul McCarthy, Janet McCutchen, Diane Nurse, and Guillermo Vazquez on or about January 31, 1991, Respondent is ordered to offer them full and immediate reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions with impairing the employees' seniority or other rights and privileges, dismissing, if necessary, any person hired as a replacement. Respondent is further ordered to make these employees whole for any loss of earnings or other benefits suffered by them by reason of the Respondent's unlawful failure to offer them reinstatement on and after January 31, 1991, until such time as it makes them a lawful offer of reinstatement, with interest.¹⁸

Having found that Respondent unlawfully suspended and subsequently discharged Hopeton Genus, Respondent is ordered to offer Genus reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, discharging, if necessary, any employee hired to replace him. The Respondent is ordered to make Hopeton Genus whole for any losses resulting from his unlawful sus-

pension and discharge, beginning on August 16, 1991, with interest, until a lawful offer of reinstatement is made.¹⁹

Respondent is ordered to remove from its files any reference to the suspension and discharge of Hopeton Genus and notify him in writing that this has been done and that evidence of this unlawful suspension and discharge will not be used as a basis for future personnel actions against him. Respondent is ordered to provide to the Union the addresses of all bargaining unit employees and the names of strikers to whom offers of reinstatement were sent, but did not receive them.

Respondent is ordered to rescind its unilateral change in its work rule regarding leaving Respondent's property during lunchbreaks.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, Circuit-Wise, Inc., North Haven, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making unilateral changes in its health insurance plan for bargaining unit employees

(b) Refusing to supply the addresses of bargaining unit employees pursuant to a proper request from the Union.

(c) Making a unilateral change in its employee work rule regarding leaving the Respondent's property during lunchbreaks.

(d) Refusing to supply the names of strikers to whom Respondent sent offers of reinstatement, but did not receive such offers.

(e) Discharging and/or failing and refusing to offer reinstatement since to striking employees for strike misconduct after having condoned their activity and offered to reinstate them.

(f) Suspending or discharging employees because they request union representation before participating in an interview in which they reasonably believe that discipline may issue against them or because they engaged in union activities protected by the Act.

(g) Threatening to discharge employees for a violation of its unilaterally changed work rule regarding leaving Respondent's property during lunchbreaks.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the status quo that existed just prior to its unlawful unilateral change in its health insurance plans on April 1, 1991, including observing the terms of its interim agreement with the Union covering health insurance, reimburse its employees for unlawfully increased employee contributions from April 1, 1991, until compliance with this Order is made, and make whole its employees for any other loss they

¹⁹ See *F. W. Woolworth*, supra; *New Horizons for the Retarded*, supra.

²⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁷ See *Ogle Protection Service*, 183 NLRB 682 (1970); *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

¹⁸ See *F. W. Woolworth Co.*, 90 NLRB 289 (1950); *New Horizons for the Retarded*, supra.

may have suffered by virtue of its unlawful change in its health insurance plans, in the manner set forth in the remedy section of this decision.

(b) Offer Frank Blazi, Gerald Burkett, Virgilio Bobis, Paul McCarthy, Janet McCutchen, Diane Nurse, and Guillermo Vazquez full and immediate reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without impairing the employees' seniority or other rights and privileges, dismissing, if necessary, any person hired as a replacement. Respondent is further ordered to make these employees whole for any loss of earnings or other benefits suffered by them by reason of the Respondent's unlawful failure to offer them reinstatement on and after January 31, 1991, until such time as it makes them a lawful offer of reinstatement, in the manner set forth in the remedy section of this decision.

(c) Offer Hopeton Genus reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, discharging, if necessary, any employee hired to replace him; and make Hopeton Genus whole for any losses resulting from his unlawful suspension and discharge, beginning on August 16, 1991, until a lawful offer of reinstatement is made, in the manner set forth in the remedy section of this decision.

(d) Remove from its files any reference to the suspension and discharge of Hopeton Genus and notify him in writing that this has been done and that evidence of this unlawful suspension and discharge will not be used as a basis for future personnel actions against him.

(e) Provide to the Union the addresses of all bargaining unit employees and the names of strikers to whom offers of reinstatement were sent, but did not receive them.

(f) Rescind its unilateral change in its work rule regarding leaving Respondent's property during lunchbreaks.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facility in North Haven, Connecticut, copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."